



BRIEFING: AUGUST 4TH EXECUTIVE/ADMINISTRATIVE COMMITTEE MEETING AGENDA ITEM #4

TO: Chairman Pringle and Authority Board Members

FROM: Roelof van Ark, CEO

DATE: 7/30/2010

RE: Draft Memorandum of Understanding with Federal Railroad Administration regarding Transbay Terminal in San Francisco

Discussion

The Secretary of Transportation and the Federal Railroad Administration (FRA) announced an allocation of up to \$2.25 billion in funding under the American Recovery and Reinvestment Act for the benefit of the California high speed train system, and determined to provide up to \$1.85 billion to the California High Speed Rail Authority for the high speed train system, and up to \$400 million to the Transbay Joint Powers Authority (TJPA) for the Train Box elements of the Transbay Terminal in San Francisco. FRA seeks to assure that the benefits of providing up to \$400 million to the TJPA will be realized for the California high speed train system, and thus, it seeks a Memorandum of Understanding with the Authority. Although the proposed MOU is not legally required at this stage, and by its terms does not create legally binding obligations, it is intended to demonstrate what FRA intends to achieve in future cooperative or grant agreements with the parties. The proposed MOU sets forth FRA's understanding that the Transbay Terminal Train Box will be able to accommodate the Authority's high speed trains, and that, after completing its environmental studies, the Authority will be able to use the Train Box in the future in perpetuity without capital costs and with shared operations and maintenance expenses, as negotiated by the Authority and the TJPA in the future. The FRA intends to execute separate grant or cooperative agreements with the High Speed Rail Authority and with TJPA.

The FRA and the Authority have developed the attached draft Memorandum of Understanding (MOU) to lay a foundation of understanding for future grants or cooperative agreements between the Authority and the FRA.

Attachments:

- ✓ MOU Between FRA and the Authority
- ✓ Resolution HSRA11-06 - MOU with the FRA Concerning Transbay Terminal in San Francisco

MEMORANDUM OF UNDERSTANDING
BETWEEN
FEDERAL RAILROAD ADMINISTRATION AND
THE CALIFORNIA HIGH SPEED RAIL AUTHORITY

This Memorandum of Understanding (MOU) between the California High-Speed Rail Authority (CHSRA) and the Federal Railroad Administration (FRA) expresses the mutual intentions of the parties regarding financial assistance to be provided by FRA for the benefit of the California high-speed rail system of up to \$2.25 billion allocated by the Secretary of Transportation for California high-speed intercity passenger rail from funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA).

WHEREAS of the up to \$2.25 billion allocated by the Secretary of Transportation for the California high-speed rail system, the Secretary has allocated up to \$400 million directly to the Transbay Joint Powers Authority (TJPA) for the Train Box portion of the Transbay Transit Center or Transbay Terminal and up to \$1.85 billion directly to the CHSRA for the California high-speed train system;

WHEREAS the new Transbay Terminal on the site of the historic Transbay Terminal at First and Mission Streets in San Francisco, California, is intended by state law to be “designed to serve Caltrain in addition to local, regional, and intercity buslines, and designed to accommodate high speed rail service.” (Cal. Public Resources Code sec. 5027.1.subd.(a).);

WHEREAS section 5027.1 of the California Public Resources Code provides that the Transbay Joint Powers Authority (TJPA) shall have primary jurisdiction concerning the financing, design, development, construction, and operation of the new Transbay Terminal;

WHEREAS section 185032 of the California Public Utilities Code provides that the CHSRA shall have exclusive authority and responsibility for planning, constructing, and operating a high speed passenger train system in California;

WHEREAS the California Legislature and the people of California declared in the California high-speed rail bond measure, Proposition 1A, that “It is the intent of the Legislature ... and the people of California ... to initiate construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim.” (Cal. Sts. & High. Code §2704.04(a));

WHEREAS the FRA desires to minimize the amount of federal financial assistance that is spent for administrative and overhead costs in order to maximize the amount of high-speed rail improvements actually built; and

WHEREAS, FRA and the TJPA have an understanding that CHSRA may use the Transbay Terminal and appurtenant facilities necessary for high speed train service in perpetuity, provided that the final Environmental Impact Statement/Environmental Impact Report and Record of Decision for the California High Speed Train System includes the Transbay Terminal as part of the high-speed rail system;

NOW, THEREFORE, the parties agree that:

Section 1. Recipients. As part of up to \$2.25 billion allocated by the Secretary of Transportation for California high-speed intercity passenger rail from funds made available under ARRA, FRA has determined to and shall award directly to TJPA a grant or cooperative agreement of up to \$400 million for construction of the initial Train Box elements of the Transbay Terminal. Under a direct grant

or cooperative agreement to TJPA for construction of the Train Box elements of the Transbay Terminal, and subject to FRA oversight, TJPA will be solely responsible to meet the FRA requirements for such funds. The parties agree that:

- (a) CHSRA will have no obligation to audit or supervise in any way the use of the \$400 million provided to TJPA by FRA.
- (b) CHSRA will not be required to provide a match for any portion of the \$400 million provided to TJPA by FRA, whether from Proposition 1A bond proceeds or otherwise.

FRA and CHSRA intend to enter into a cooperative agreement(s) addressing FRA funding for planning, engineering, and environmental analyses being conducted by CHSRA in support of the high-speed train project. Subject to satisfactory completion by CHSRA and FRA of environmental reviews and satisfaction of program requirements under ARRA and other relevant Federal statutes and regulations, and all programmatic milestones and conditions imposed by FRA, FRA and CHSRA intend to enter into additional cooperative agreement(s) for the remaining \$1.85 billion that FRA has allocated to support implementation of the high-speed train project.

Section 2. Use of Transbay Terminal for High-Speed Rail. In order to ensure that the benefits of providing up to \$400 million for construction of the initial Train Box elements of the Transbay Terminal from the FRA are actually realized without capital costs to the CHSRA for the initial Train Box, FRA and TJPA have an understanding that the Train Box will be able to accommodate CHSRA's high speed trains and that CHSRA may use the Transbay Terminal and appurtenant facilities needed for high speed intercity passenger rail service in perpetuity at such times as are needed for high speed train service in accordance with such agreements as CHSRA and TJPA may make. CHSRA will be responsible for the costs of high-speed rail operations and certain shared costs at the Transbay Terminal, as provided in Section 3 of this MOU, but CHSRA will not be responsible for any other costs or charges except as otherwise agreed by CHSRA.

Section 3. Shared expenses. The parties expect that when and to the extent CHSRA exercises the rights to use the Transbay Terminal referenced in section 2, CHSRA will pay for the operation of its station functions in a portion of Transbay Terminal, and also pay its share of common area expenses and charges for the operation and maintenance of the facilities comprising the Transbay Terminal. The parties further expect that CHSRA's share of common charges will be not more than an amount proportionate to CHSRA's use of the Transbay Terminal, unless TJPA and CHSRA otherwise agree. TJPA has also committed to FRA that it will negotiate in good faith with CHSRA regarding a fair and equitable allocation between the parties of responsibility for other matters related to the use of the Transbay Terminal.

Section . Environmental Clearances. CHSRA and FRA will work cooperatively together and with TJPA, as appropriate, to bring all environmental, historic preservation, and related kinds of review or proceedings, both State and Federal for the California high-speed train system, including without limitation the NEPA, the California Environmental Quality Act, Section 106 of the National Historic Preservation Act, section 4(f) of the Department of Transportation Act, and permits from the Army Corps of Engineers or others, related to California high-speed rail serving San Francisco, to a successful conclusion as rapidly as possible.

This document expresses the unequivocal intentions of the parties as a basis for going forward, but does not create any legally binding obligations.

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

By: _____

FEDERAL RAILROAD ADMINISTRATION

By: _____
Joseph C. Szabo, Administrator



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

**Resolution # HSRA 11-06
Regarding a Memorandum of Understanding with the Federal Railroad Administration
Concerning Transbay Terminal in San Francisco**

WHEREAS the Secretary of Transportation has allocated the sum of up to \$2.25 billion for the benefit of the California high-speed rail system from funds made available under the American Recovery and Reinvestment Act of 2009;

WHEREAS the Secretary of Transportation and the Federal Railroad Administration (FRA) have determined that, of the \$2.25 billion allocated for high-speed rail projects in California, up to \$400 million will be provided by FRA directly to the Transbay Joint Powers Authority (TJPA) for the Train Box of the Transbay Terminal, and up to \$1.85 billion will be provided by FRA directly to the HSRA;

WHEREAS the FRA seeks to assure that the \$2.25 billion allocation is used for the benefit of the California high-speed rail system;

WHEREAS the Authority and the FRA intend to enter into cooperative agreements regarding the use of up to \$1.85 billion by the Authority for the benefit of the California high speed train system;

WHEREAS it is desirable for the California High Speed Rail Authority to enter into a memorandum of understanding with the Federal Railroad Administration expressing the mutual intentions of the parties, and reflecting that FRA has reached an understanding with TJPA to assure that the up to \$400 million in ARRA funds FRA will provide to TJPA will benefit the California high speed train system being developed by the Authority; and

NOW, THEREFORE, BE IT RESOLVED THAT

1. The Chief Executive Officer is authorized to execute a memorandum of understanding with the Federal Railroad Administration in substantially the form as shown on the draft memorandum attached to this resolution, and
2. The Chief Executive Officer is authorized to make non-material revisions to the draft memorandum prior to signing it as he sees fit that are embraced by and in harmony with the provisions contained in the attached draft, provided that any subsequent material modifications shall be submitted for approval by the Authority Board.

Vote:

Date:

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